

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of: |) | |
| |) | |
| Time Warner Entertainment |) | CSR-5955-E |
| Company, L.P. |) | |
| |) | |
| Petition for Determination of Effective |) | |
| Competition in Doylestown (OH0787) |) | |
| and Chippewa (OH1590), Ohio |) | |

MEMORANDUM OPINION AND ORDER

Adopted: February 5, 2003

Released: February 12, 2003

By the Deputy Chief, Media Bureau:

I. INTRODUCTION

1. Time Warner Entertainment Company, L.P. and TW Fanch-Two Co. (collectively, "Time Warner") have filed with the Commission a petition pursuant to Sections 76.7, 76.905(b)(4) and 76.907 of the Commission's rules seeking a finding of effective competition in Doylestown and Chippewa, Ohio ("the Communities").¹ Time Warner alleges that its cable systems serving the Communities are subject to effective competition pursuant to Section 623(a)(2) of the Communications Act of 1934, as amended ("Communications Act"), and the Commission's implementing rules.² Time Warner claims the presence of effective competition in the Communities stems from the competing services provided by Doylestown Telephone Company Inc. d/b/a Doylestown Cable Company ("Doylestown Cable"), a franchised cable operator and local exchange carrier ("LEC") that serves the Communities.³ No opposition to the petition was filed.

II. DISCUSSION

2. In the absence of a demonstration to the contrary, cable systems are presumed not to be subject to effective competition,⁴ as that term is defined by Section 76.905 of the Commission's rules.⁵

¹ 47 C.F.R. § 76.7; 47 C.F.R. § 76.905(b)(4); 47 C.F.R. § 76.907. Time Warner states that 47 C.F.R. § 76.914 is inapplicable in this matter because, according to the Commission's public files and to the best of Time Warner's knowledge, neither the Village of Doylestown nor the Township of Chippewa are currently certified to regulate basic service tier rates.

² 47 U.S.C. § 543(a)(2); 47 C.F.R. § 76.905.

³ 47 U.S.C. § 543(a); 47 C.F.R. § 76.905(b)(4).

⁴ 47 C.F.R. § 76.906.

⁵ 47 C.F.R. § 76.905.

The cable operator bears the burden of rebutting the presumption that effective competition does not exist with evidence that effective competition is present within the relevant franchise area.⁶ Based on the record in this proceeding, Time Warner has met this burden.

3. Section 623(l)(1)(D) of the Communications Act provides that a cable operator is subject to effective competition, and therefore exempt from cable rate regulation, if a LEC or its affiliate offers video programming services directly to subscribers by any means (other than direct-to-home satellite services) in the franchise area of an unaffiliated cable operator which is providing cable service in that franchise area, provided the video programming services thus offered are comparable to the video programming services provided by the unaffiliated cable operator in that area.⁷

4. The Commission has stated that an incumbent cable operator could satisfy the LEC effective competition test by showing that the LEC is technically and actually able to provide service that substantially overlaps the incumbent operator's service in the franchise area.⁸ The incumbent cable operator also must show that the LEC intends to build out its cable system within a reasonable period of time if it has not already done so, that no regulatory, technical or other impediments to household service exist, that the LEC is marketing its services so that potential customers are reasonably aware that the LEC's services may be purchased, that the LEC has begun actual commercial service, the extent of that service, the ease with which service may be expanded, and the expected date for completion of construction in the franchise area.⁹

5. Time Warner operates a cable television system in the Communities for which it seeks a determination of effective competition. Time Warner has provided information demonstrating that Doylestown Cable is certified as a LEC authorized to provide local and inter-exchange service to the Communities.¹⁰ Therefore, Doylestown Cable qualifies as a LEC for purposes of the LEC effective competition test.¹¹

6. In addition to qualifying as a LEC, Doylestown Cable was awarded franchises for the provision of cable service within the Communities.¹² Moreover, Time Warner has submitted Doylestown Cable's marketing materials -- which include direct mail solicitations and examples of media advertising - - in order to show that residents of the Communities need only contact Doylestown Cable to activate service.¹³ Time Warner argues that there are no regulatory, technical or other impediments to Doylestown

⁶ See 47 C.F.R. §§ 76.906 and 76.907(b).

⁷ 47 U.S.C. § 543(1)(1)(D); see also 47 C.F.R. § 76.905(b)(4). This fourth statutory effective competition test is referred to as the "LEC" effective competition test.

⁸ See *Implementation of Cable Act Reform Provisions of the Telecommunications Act of 1996*, 14 FCC Rcd 5296, 5305 (1999) ("Cable Reform Order").

⁹ *Id.*

¹⁰ Petition at Exhibit 1 (Doylestown Cable's marketing materials demonstrating that Doylestown Cable provides local and long distance telephone service) and Exhibit 2 (Listing of Local Operating Companies and Inter-Exchange Carriers regulated by the Public Utility Commission of Ohio).

¹¹ See 47 U.S.C. § 543(1)(1)(D).

¹² Petition at Exhibit 3 (Doylestown Cable Franchise - Doylestown) and Exhibit 4 (Doylestown Cable Franchise - Chippewa). Reference to Doylestown Cable's Internet website indicates that it continues to offer cable television service to the Communities. See www.doylestowntelephone.com/catv.htm.

¹³ Petition at 5 and Exhibit 1. Time Warner also states that Doylestown Cable's website provides customers with
(continued...)

Cable's provision of cable service within the Communities.¹⁴ As to whether Doylestown Cable provides cable service that substantially overlaps Time Warner's franchise area, Time Warner submitted a declaration that estimates that Doylestown Cable currently passes over 99 percent of the households in the Communities,¹⁵ and is required by separate franchises to serve all households in Doylestown and Chippewa not already having cable service.¹⁶ We find that Time Warner has demonstrated that Doylestown Cable is technically and actually able to offer multichannel video service to the Communities because Doylestown Cable's operations in the Communities substantially overlap those of Time Warner.

7. Time Warner submitted Doylestown Cable's channel lineup which demonstrates that its cable service offers over 60 channels of video programming, including numerous non-broadcast programming services such as ESPN, HBO and CNN, as well as a complement of local television broadcast stations, such as WKYC (NBC), WEWS (ABC), and WOIO (CBS).¹⁷ Therefore, Doylestown Cable provides comparable programming as required by the LEC effective competition test.

8. Time Warner has demonstrated that Doylestown Cable commenced providing cable service within the Communities, has marketed its services in a manner that makes potential subscribers reasonably aware of its services, and otherwise satisfied the LEC effective competition test consistent with the evidentiary requirements set forth in the *Cable Reform Order*.¹⁸ Based on the foregoing, we conclude that Time Warner has submitted sufficient evidence demonstrating that its cable system serving the Communities are subject to LEC effective competition.

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contact information in order to sign up for Doylestown Cable services. Petition n.20.

¹⁴ Petition at 5.

¹⁵ See Declaration of Stephen R. Fry, President, Northeast Ohio Division, Time Warner Cable. Stephen Fry states that Time Warner engineering personnel have reported to him that they have observed Doylestown Cable construction crews constructing cable facilities in Doylestown and Chippewa. Based on such observations, Stephen Fry estimates, on behalf of Time Warner, that Doylestown Cable's system passes over 99 percent of the households in the Communities. Declaration of Stephen R. Fry at 1.

¹⁶ Petition at 5 and Exhibit 3 (Doylestown Cable Franchise -- Doylestown at § 10) and Exhibit 4 (Doylestown Cable Franchise -- Chippewa at § 10).

¹⁷ Petition at 6-7, Exhibit 1 and Exhibit 5.

¹⁸ See *Cable Reform Order*, 14 FCC Red at 5305.

III. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that the petition filed by Time Warner Entertainment Company, L.P. for a determination of effective competition in Doylestown and Chippewa, Ohio **IS GRANTED**.

10. This action is taken pursuant to delegated authority pursuant to Section 0.283 of the Commission's rules.¹⁹

FEDERAL COMMUNICATIONS COMMISSION

William H. Johnson
Deputy Chief, Media Bureau

¹⁹ 47 C.F.R. § 0.283.